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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,221	02/06/2002	Guy L. Clifton	26060/06	7693

7590 04/30/2003

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EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 04/30/2003

A

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/068,221	GUY CLIFTON	
	<b>Examiner</b>	<b>Art Unit</b>	
	David C. Comstock	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) 15-18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 June 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Drawings***

The corrected or substitute drawings were received on 4 June 2002. These drawings are accepted.

### ***Specification***

The disclosure is objected to because of the following informalities: page 5, lines 9-10, "The is another problem encountered when two sets of retractor arms are used." does not make sense.

Appropriate correction is required.

### ***Claim Objections***

Claims 15-18 are objected to because of the following informalities: claims 15-18 are addressed to a kit but depend from claim 13, which is not a kit. For examination purposes, claims 15-18 will be treated as depending from claim 14, which is directed to a kit. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, 8-15, 17-19, and 21-26, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Mayer et al. (5,728,046).

Mayer et al. disclose a retractor comprising first arms 2,4 and second arms 1,3 pivotally connected to the first arms. First and second elongated blades 32 are supported by the first arms. The blades have a retractor engagement end 29, an anchor guide 33, and a bone-screw anchor 36. The first arms have a finger-grip section, i.e., any section of the arms is capable of being gripped by a finger. Each of the blades has complementary retractor blades 7 (and/or those which can be positioned in auxiliary eyelets 6), 18, and 19. (See Figs. 1 and 3 and col. 2, lines 49-50.) The device is inserted through an incision, the blades are positioned and anchored to bone, the complementary blades are positioned, and the retractor is operated to maintain a desired position (see col. 3, line 37 - col. 4, line 6).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 7, 16, and 20, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (5,728,046) in view of Auerbach et al. (6,302,842).

Mayer et al. disclose the claimed invention except for the slip resistant surface.

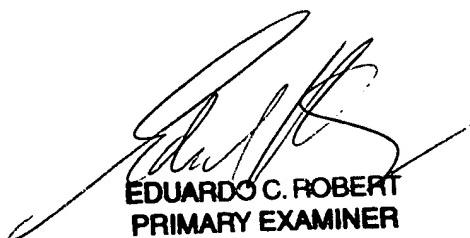
Auerbach et al. disclose a similar device 10 having blades 30,32 with a slip resistant surface 50 to enhance gripping and improve the effectiveness of the device (see Fig. 1 and col. 3, lines 3-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the retractor of Mayer et al. with blades having a slip resistant surface, in view of Auerbach et al., in order to enhance gripping and improve the effectiveness of the device.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.

  
D.C. Comstock  
April 24, 2003

  
EDUARDO C. ROBERT  
PRIMARY EXAMINER